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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,579	02/23/2004	Richard T. Evers	0638	9925

		EXAMINER
7590	03/06/2006	RAMPURIA, SATISH

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ART UNIT	PAPER NUMBER
2191	

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/785,579	EVERS, RICHARD T.
	Examiner	Art Unit	
	Satish S. Rampuria	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *23 January 2006*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-21* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-21* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

Response to Amendment

1.   This action is in response to the Amendment filed on Jan 23, 2006.

2.   The objection to specification due to title is withdrawn in view of applicant's amendment.

3.   The objection to claims 1 and 11 still stand objected and further applies to new claim 21.

Appropriate correction is required.

4.   The rejections under 35 U.S.C. §112 second paragraph to claims 1-20 still stand rejected

and further applies to new claim 21.

5.   The rejection under 35 U.S.C. §101 to claims 1-10 is withdrawn in view of applicant's

amendment/comments.

6.   New Claims added by the Applicant: 21.

7.   Claims pending in the application: 1-21.

Response to Arguments

8.   Applicant's arguments with respect to claims have been considered but they are not

persuasive.

In the remarks, the applicant has argued that:

(i)   The reference does not teach or suggest the refined recital of employing an *installer*, writing a Primary Data Stream file to an NT File Structure logical volume from such *installer; and* writing associated data with the Primary Data Stream file and to the NT File Structure logical volume as an Alternate Data Stream file from such *installer*.

The Examiner admits that Berghel et al. is silent on the recited installer. The Examiner states that this feature is "deemed to be inherent to Berghel system." The Examiner further states that Berghel et al. (page 4) discloses "ADS contains binary executables" and that it would be "inoperative if the installer is not present to provide ADS from PDS that includes [an] executable file." These statements are respectfully traversed.

It is submitted that the Examiner improperly uses impermissible hindsight to reach the above conclusions in view of Applicant's refined recital in Claim 1.

(ii)   Zimniewicz et al., which does not disclose any Primary Data Stream file or any Alternate Data Stream file, adds nothing to Berghel et al. regarding writing a Primary Data Stream file or an Alternate Data Stream file to an NT File Structure logical volume from an installer to render Claims 1 or 11 unpatentable.

Examiner's response:

(i)   In response to applicant's argument that the examiner's conclusion is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). It is noted that rejectin clearly points out where

the limitations are found in the reference and further, why it would be inherent to have installer with in Berghel system. Berghel, discloses attaching executables to a file stream, nowhere obviously installer is present to create executables (page 4, section Phishing and Executable Streams). It is therefore submitted that installer is inherent to the Berghel's system. Applicant only makes general allegations of improper hindsight reasoning and does not point out any errors in the rejection. Therefore, the rejection is proper and maintained herein.

(ii)   In response to applicant's argument Zimniewicz discloses custom actions for installation of an application. Zimniewicz was used to reject claim 2 where it shows (see the rejection below) each limitations are taught by Zimniewicz and why it would have been obvious. Applicant's argue that Zimniewicz adds nothing to Berghel, there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Zimniewicz adds to Berghel that during the installation it would be good to provide an easy to understand way that allows the user to clearly see what actions are performed by the installer (see the rejection below). Therefore, the rejection is proper and maintained herein.

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Claim Objections

10.   Claims 1, 11 and 21 objected to because of the following informalities: The abbreviation

"NT" should incorporate with its full form.

The objection of the base claim is necessarily incorporated into the dependent claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

11.   The following is a quotation of the **second paragraph** of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

12.   Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention.

Clarification and/or correction are required.

Regarding, claim 1, the limitation, "installer" is unclear as to it used to install the file or the files

are simply gets copied where no installer is needed. In the claim language it seems that the files

are only copying from one location to another.

Regarding, claim 1, the limitation, "associating data" is unclear as to what data is being

associated with Primary Data Stream.

Regarding, claim 11, the limitation, "installer" is unclear as to it used to install the file or the

files are simply gets copied where no installer is needed. In the claim language it seems that the

files are only copying from one location to another.

Regarding, claim 21, the limitation, "installer" is unclear as to it used to install the file or the

files are simply gets copied where no installer is needed. In the claim language it seems that the

files are only copying from one location to another.

Regarding, claim 21, the limitation, "associating data" is unclear as to what data is being

associated with Primary Data Stream.

The rejection of the base claims 1 and 11 is necessarily incorporated into the dependent

claims 2-10 and 12-20 respectively.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

13.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign
country, before the invention thereof by the applicant for a patent.

14.   Claims 1, 3-5, 8-10, 11, 12, 14-16 and 19-21 are rejected under 35 U.S.C. 102(a) as being

anticipated by the document Phishing in Alternate Data Streams published by Berghel et al.

(hereinafter, Berghel) published in Feb 6, 2004.

Per claim 1:

Berghel discloses:

- A method for secure installation and operation of software, said method comprising:

- employing an NT File Structure logical volume (page 1 section Alternate Data Stream

  "NTFS the "primary" data stream...");

- employing an installer; writing a Primary Data Stream file to said NT File Structure

  logical volume from said installer (page 1 Alternate Data Stream "large number...

  alternate data stream (ADSs)... associated with... primary data stream (PDS)");

- associating data with said Primary Data Stream file (page 1 Alternate Data Stream "large

  number... alternate data stream (ADSs)... associated with... primary data stream

  (PDS)"); and

- writing said associated data to said NT File Structure logical volume as an Alternate Data

  Stream file from said installer (page 1 Alternate Data Stream "large number... alternate

  data stream (ADSs)... associated with... primary data stream (PDS)").

Although, Berghel discloses NTFS and ADS and PDS files in Windows environment.

Berghel is silent on installer. However, the feature deemed to be inherent to Berghel system.

Berghel disclose ADS contains binary executables (page 4, section Phishing and Executable

Streams). Berghel system would in inoperative if the installer is not present to provide ADS from

PDS that includes executable file.

The limitation regarding secure installation and operation of software in the preamble is not

given any patentable weight because the body of the claim does not recite any limitations related

to secure installation and operation of software.

Per claim 3:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- writing, reading or manipulating said Alternate Data Stream file from an application

  program after said writing said associated data (page 3, "Next, we'll attach an ADS to an

  empty file: C:\...\test>echo "this is the first ADS associated with file1.txt">

  file1.txt:first_ads.txt..." and page 9, section URL Pearls "Windows utility that is ideal for

  ADS manipulation is <cp.exe>").

Per claim 4:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- employing as said Primary Data Stream file an executable file (page 4, section Phishing

  and Executable Streams "ADSs may contain anything... most interesting type of

  "anything" is the binary executable...").

Per claim 5:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- creating a Primary Data Stream directory chain (page 2, "will create a new directory,

  <test>");

- writing said Primary Data Stream directory chain to said NT File Structure logical

  volume from said installer (page 2, "will create a new directory, <test>");

- writing said Primary Data Stream file to said Primary Data Stream directory chain in said

  NT File Structure logical volume from said installer (page 2, "since the PDSname field is

  null, <ads0.txt> is by default associated with the subdirectory name in the MFT.

  Directories in Windows are themselves files that reference other files");

- associating said data with said Primary Data Stream directory chain or said Primary Data

  Stream file by creating and closing said Alternate Data Stream file (page 2, "since the

  PDSname field is null, <ads0.txt> is by default associated with the subdirectory name in

  the MFT. Directories in Windows are themselves files that reference other files" and page

  1 Alternate Data Stream "large number... alternate data stream (ADSs)... associated

  with... primary data stream (PDS)"); and

- installing said associated data to said NT File Structure logical volume as said Alternate Data Stream file from said installer (page 1 Alternate Data Stream "large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)").

Per claim 8:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- employing as said associated data first data (page 1 Alternate Data Stream "large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)"); employing as said Alternate Data Stream file a first Alternate Data Stream file; employing second data (page 1 Alternate Data Stream "large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)");

- associating said second data with said Primary Data Stream file (page 1 Alternate Data Stream "large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)"); and

- writing said associated second data to said NT File Structure logical volume as a second Alternate Data Stream file from said installer (page 1 Alternate Data Stream "large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)").

Per claim 9:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- displaying said associated data from said Alternate Data Stream file in said NT File Structure logical volume (Figure 1 and related discussion).

Per claim 10:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- defining in said installation file a Primary Data Stream directory chain, said Primary Data Stream file, said Alternate Data Stream file, and at least one information file (page 4, section Phishing and Executable Streams "ADSs may contain anything... most interesting type of "anything" is the binary executable...");

- displaying said at least one information file from said installation file (page 3, Figure 1 and related discussion);

- creating said Primary Data Stream directory chain in said NT File Structure logical volume (page 2, "will create a new directory, <test>");

- copying said Primary Data Stream file from said installation file to said Primary Data Stream directory chain in said NT File Structure logical volume (page 2, "since the PDSname field is null, <ads0.txt> is by default associated with the subdirectory name in the MFT. Directories in Windows are themselves files that reference other files"); and

- copying said Alternate Data Stream file from said installation file to said Primary Data Stream directory chain in said NT File Structure logical volume (page 3, "Next, we'll attach an ADS to an empty file: C:\...\test>echo "this is the first ADS associated with file1.txt"> file1.txt:first_ads.txt..." and page 9, section URL Pearls "Windows utility that is ideal for ADS manipulation is <cp.exe>").

Although, Berghel discloses NTFS and ADS and PDS files in Winodows environment.

Berghel is silent on installer. However, the feature deemed to be inherent to Berghel system.

Berghel disclose ADS contains binary executables (page 4, section Phishing and Executable

Streams). Berghel system would in inoperative if the installer is not present to provide ADS from

PDS that includes executable file.

Claims 11, 12, 14-16 and 19-20 are the system claim corresponding to method claims 1, 3-5, 9

and 10 respectively, and rejected under the same rational set forth in connection with the

rejection of claims 1, 3-5, 9 and 10 respectively, above.

Claim 21 is the computer product claim corresponding to method claim 1 and rejected under the

same rational set forth in connection with the rejection of claim 1, above.

Claim Rejections - 35 USC § 103

15.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this
title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a
whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said
subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16.   Claims 2, 6, 7, 13, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Berghel US in view of US Patent No. 6,744,450 to Zimniewicz et al. (hereinafter,

Zimniewicz).

Per claim 2:

The rejection of claim 1 is incorporated, and further, Berghel does not explicitly disclose

selecting said data from the group comprising an installation log, an application configuration

file, an error log, help information, and database information.

However, Zimniewicz discloses in an analogous computer system selecting said data

from the group comprising an installation log (col. 8, lines 45-47 "error log indicating why the

install cannot proceed"), an application configuration file (col. 7, lines 30-33 "install... pre-

configured by the suite owner"), an error log (col. 8, lines 45-46 "...written out to the error

log..."), help information (col. 6, lines 41-42 "...a setup database file..."; the database file is

could be a help file as well since computer stores the help file into a database, emphasis added),

and database information (col. 6, lines 41-42 "...a setup database file...").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time

the invention was made to incorporate the method of selecting data from the various sources as

taught by Zimniewicz into the method of installation of ADS PDS files as taught by Berghel.

The modification would be obvious because of one of ordinary skill in the art would be

motivated to have various types of files to provide the user a logical and easy to understand way

that allow them to clearly see the state of the components affected, and what actions will be

performed as suggested by Zimniewicz (col. 3, lines 5-22).

Per claims 6 and 7:

The rejection of claim 5 is incorporated, and further, Berghel disclose:

- employing an installation file comprising said Primary Data Stream file, said Alternate

    Data Stream file (page 1 Alternate Data Stream "large number... alternate data stream

(ADSs)... associated with... primary data stream (PDS)"), installation instructions, said

Primary Data Stream directory chain (page 1 Alternate Data Stream "large number...

alternate data stream (ADSs)... associated with... primary data stream (PDS)" and page

2, "since the PDSname field is null, <ads0.txt> is by default associated with the

subdirectory name in the MFT. Directories in Windows are themselves files that

reference other files").

Berghel does not explicitly disclose End User License Agreement.

However, Zimniewicz discloses in an analogous computer system End User License

Agreement (col. 8, lines 26-30 "the UI Manager 91 displays start up screens to the user during

this stage, including Welcome, Name/Organization, Password, product identification (PID), and

end user license agreement (EULA) screens").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time

the invention was made to incorporate the method of comprising an End User License

Agreement as taught by Zimniewicz into the method of installation of ADS PDS files as taught

by Berghel. The modification would be obvious because of one of ordinary skill in the art would

be motivated to use an End User License Agreement before installation to permit the right user to

install the custom installation as suggested by Zimniewicz (col. 3, lines 14-22).

Claims 13, 17 and 18 are the system claim corresponding to method claims 2, 6 and 7

respectively, and rejected under the same rational set forth in connection with the rejection of

claims 2, 6 and 7 respectively, above.

Conclusion

17.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732.**

The examiner can normally be reached on **8:30 am to 5:00 pm** Monday to Friday except every

other Friday and federal holidays. Any inquiry of a general nature or relating to the status of this

application should be directed to the **TC 2100 Group receptionist: 571-272-2100**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708.** The fax phone number for the

organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Satish S. Rampuria
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Art Unit 2191

WEI ZHEN
SUPERVISORY PATENT EXAMINER